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10 CFR Ch. II (1–12 Edition)

(l) A statement signed by an authorized executive official certifying that the information contained in the application is accurate.

(m) If a not-for-profit electric cooperative, a statement certifying that no claim for tax credit has been made for the same electricity for which incentive payments are requested.

[60 FR 36964, July 19, 1995, as amended at 71 FR 46387, Aug. 14, 2006]

§ 451.9 Procedures for processing applications.

(a) *Supplemental information.* DOE may request supplementary information relating to the application.

(b) *Audits.* DOE may require the applicant to conduct at its own expense and submit an independent audit, or DOE may conduct an audit, to verify the number of kilowatt-hours claimed to have been generated and sold by the qualified renewable energy facility and for which an incentive payment has been requested or made.

(c) *DOE determinations.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall determine the extent to which appropriated funds are available to be obligated under this program for each fiscal year. Upon evaluating each application and any other relevant information, DOE shall further determine:

(1) Eligibility of the applicant for receipt of an incentive payment, based on the criteria for eligibility specified in this part;

(2) The number of kilowatt-hours to be used in calculating a potential incentive payment, based on the net electric energy generated from a qualified renewable energy source at the qualified renewable energy facility and sold during the prior fiscal year;

(3) The number of kilowatt-hours to be used in calculating a potential additional incentive payment, based on the total quantity of accrued energy generated during prior fiscal years;

(4) The amounts represented by 60 percent of available funds and by 40 percent of available funds; and

(5) Whether justification exists for altering the 60:40 payment ratio specified in paragraph (e) of this section. If DOE intends to modify the 60:40 ratio,

the Department shall notify Congress, setting forth reasons for such change.

(d) *Calculating payments.* Subject to the provisions of paragraph (e) of this section, potential incentive payments under this part shall be determined by multiplying the number of kilowatt-hours determined under § 451.9(c)(2) by 1.5 cents per kilowatt-hour, and adjusting that product for inflation for each fiscal year beginning after calendar year 1993 in the same manner as provided in section 29(d)(2)(B) of the Internal Revenue Code of 1986, except that in applying such provisions calendar year 1993 shall be substituted for calendar year 1979. Using the same procedure, a potential additional payment shall be determined for the number of kilowatt-hours determined under paragraph (c)(3) of this section. If the sum of these calculated payments does not exceed the funds determined to be available by the Assistant Secretary for Energy Efficiency and Renewable Energy under § 451.9(c), DOE shall make payments to all qualified applicants.

(e) *Insufficient funds.* If funds are not sufficient to make full incentive payments to all qualified applicants, DOE shall—

(1) Calculate potential incentive payments, if necessary on a *pro rata* basis, not to exceed 60 percent of available funds to owners or operators of qualified renewable energy facilities using solar, wind, ocean, geothermal, and closed-loop biomass technologies based on prior year energy generation;

(2) Calculate potential incentive payments, if necessary on a *pro rata* basis, not to exceed 40 percent of available funds to owners or operators of all other qualified renewable energy facilities based on prior year energy generation;

(3) If the amounts calculated in paragraph (e)(1) and (2) of this section result in one owner group with insufficient funds and one with excess funds, allocate excess funds to the owner group with insufficient funds and calculate additional incentive payments, on a *pro rata* basis if necessary, to such owners or operators based on prior year energy generation.

(4) If potential payments calculated in paragraphs (e)(1), (2), and (3) of this

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section do not exceed available funding, allocate 60% of remaining funds to paragraph (e)(1) recipients and 40% to paragraph (e)(2) recipients and calculate additional incentive payments, if necessary on a *pro rata* basis, to owners or operators based on accrued energy;

(5) If the amounts calculated in paragraph (e)(4) of this section result in one owner group with insufficient funds and one with excess funds, allocate excess funds to the owner group with insufficient funds and calculate additional incentive payments, on a *pro rata* basis if necessary, to such owners or operators based on accrued energy.

(6) Notify Congress if potential payments resulting from paragraphs (e)(3) or (5) of this section above will result in alteration of the 60:40 payment ratio;

(7) Make incentive payments based on the sum of the amounts determined in paragraphs (e)(1) through (5) of this section for each applicant;

(8) Treat the number of kilowatt-hours for which an incentive payment is not made as a result of insufficient funds as accrued energy for which future incentive payment may be made; and

(9) Maintain a record of each applicant's accrued energy.

(f) *Notice to applicant.* After calculating the amount of the incentive payment under paragraphs (e) through (g) of this section, the DOE Deciding Official shall then issue a written notice of the determination to the applicant—

(1) Approving the application as eligible for payment and forwarding a copy to the DOE Finance Office with a request to pay;

(2) Setting forth the calculation of the approved amount of the incentive payment; and

(3) Stating the amount of accrued energy, measured in kilowatt-hours, for each qualified renewable energy facility, if any, and the energy source for same.

(g) *Disqualification.* If the application does not meet the requirements of this part or some of the kilowatt-hours claimed in the application are disallowed as unqualified, the Deciding Official shall issue a written notice denying the application in whole or in

part with an explanation of the basis for denial.

[60 FR 36964, July 19, 1995, as amended at 71 FR 46387, Aug. 14, 2006]

§ 451.10 Administrative appeals.

(a) In order to exhaust administrative remedies, an applicant who receives a notice denying an application in whole or in part shall appeal, on or before 45 days from date of the notice issued by the DOE Deciding Official, to the Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in accordance with the procedures set forth in subpart C of 10 CFR part 1003.

(b) If an applicant does not appeal under paragraph (a) of this section, the determination of the DOE Deciding Official shall become final for DOE and judicially unreviewable.

(c) If an applicant appeals on a timely basis under paragraph (a) of this section, the decision and order of the Office of Hearings and Appeals shall be final for DOE.

(d) If the Office of Hearings and Appeals orders an incentive payment, the DOE Deciding Official shall send a copy of such order to the DOE Finance Office with a request to pay.

PART 452—PRODUCTION INCENTIVES FOR CELLULOSIC BIOFUELS

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AUTHORITY: 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 16251.

SOURCE: 74 FR 52871, Oct. 15, 2009, unless otherwise noted.

§ 452.1 Purpose and scope.

(a) This part sets forth the standards, policies, and procedures that the Department of Energy uses for receiving, evaluating, and awarding bids in reverse auctions of production incentive payments for cellulosic biofuels under section 942 of the Energy Policy Act of 2005 (42 U.S.C. 16251).